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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,703	11/26/2001	Claes Ohngren	024444-990	3922

7590

11/16/2004

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EXAMINER

KERNS, KEVIN P

ART UNIT	PAPER NUMBER
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1725

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/991,703

Applicant(s)

OHNGREN ET AL.

Examiner

Kevin P. Kerns

Art Unit

1725

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-3, 5-7 and 10.

Claim(s) withdrawn from consideration: _____

8. ☒ The drawing correction filed on 29 October 2004 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Kevin Kerns 11/15/04

Kevin P. Kerns
Examiner
Art Unit: 1725

Continuation of 5. does NOT place the application in condition for allowance because: the applicants' arguments on pages 8-13 of the remarks remain unpersuasive in view of paragraphs 6 and 7 of the final rejection. The applicants have further argued that Darnfors teaches away from the disclosures of the primary references England et al., as well as Olsson in view of Ernst. The examiner respectfully disagrees, as the Darnfors alloy composition, when taken as a whole, provides a material that has improved resistance at high temperatures against carburizing and oxidizing (as provided in large part by the relatively higher amount of silicon constituent), while providing good creep fracture resistance and resistance to attack from gaseous halides and metal oxides, which are commonly present in metal tubes within chemical reactors. The slight differences in the ranges of silicon percentages set forth in the primary references do not make the alloy composition of Darnfors unobvious for use as a secondary reference under 35 USC 103(a), as there is proper motivation for its combination with the primary references. One of ordinary skill in the art in metal tube design for high temperature/corrosive applications would have sought an improved alloy composition for such applications. As a result, the examiner respectfully asserts that a prima facie case of obviousness has been established in paragraphs 6 and 7 of the final rejection.

Continuation of 10. Other: a certified copy of the Swedish priority application has not been received by the USPTO.

Kevin Kern 11/15/04